ZUCKERT SCOUTT & RASENBERGER, L.L.P.

ATTORNEYS AT LAW

888 Seventeenth Street, NW, Washington, DC 20006-3309
Telephone [202] 298-8660   Fax [202] 342-0683
www.zsrlaw.com

257965

JAMES A. CALDERWOOD

jacalderwood@zsrlaw.com

October 17, 2003

VIA FACSIMILE and FIRST CLASS MAIL

Ms. Kaye Kirby
Office of Bus and Truck
Standards and Operations
Federal Motor Carrier Safety Administration
Department of Transportation
400 Seventh Street, SW
Washington, DC 20590

FMCSA-2003-14911-10

Re: Application for Exemption in Docket 14911

Dear Ms. Kirby:

This letter is submitted in connection with the application for exemptions from certain controlled substances and alcohol testing filed by Mayflower Transit LLC and United Van Lines LLC (the Applicants) and pending before the Federal Motor Carrier Safety Administration under Docket No. 14911. Without repeating the information contained in the application, the applicants would like to take this opportunity to clarify one major misconception regarding the sought exemption.

The majority of the comments received in Docket 14911 in opposition to the application contend that including non-CDL drivers in the same pool as CDL drivers increases the likelihood of not testing the CDL drivers at the required level. See, e.g., Comments filed by the Drug and Alcohol Testing Industry Association. Plainly, this is incorrect. The applicants fully appreciate the importance of testing at the required levels and granting the exemption would in no way compromise the integrity of the testing or dilute the pool of the tested CDL drivers.

As a matter of arithmetics, even with the exemption the applicants would exceed the required testing levels. Mayflower Transit and United Van Lines together utilize 7784 CDL and 429 non-CDL drivers. That is a total of 8213. The required testing rate for controlled substances is 50% of CDL drivers. 50% of 7784 is 3892. To eliminate any chance of dilution, the applicants would test at a minimum 3892 CDL drivers plus 429 non-CDI drivers, for a total of 4321 drivers. This way, even if <u>all</u> the non-CDL
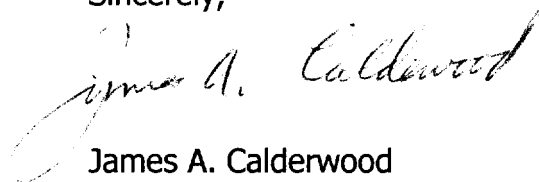
drivers are randomly included in the testing pool (very low probability, but theoretically possible), the applicants would still meet the requirement of testing 50% of CDL drivers.

Similarly, in case of testing for alcohol, the required level 10%, which is 778 of the applicants' 7784 CDL drivers. Again, to eliminate any chance of dilution, the applicants would need to test at a minimum 778 CDL drivers plus 429 non-CDL drivers, for a total of 1207 drivers. Thus, if the applicants tested at least 4321 of all of their drivers (CDL and non-CDL) for controlled substances and 1207 of all their drivers for alcohol, they would meet the required testing levels for CDL drivers in all circumstances.

In fact, the applicants are currently testing at levels higher than the regulatory requirements and would continue to do so after receiving the exemption. The applicants test 55% of their drivers for controlled substances and 15% for alcohol. This is 4517 and 1231 drivers, respectively. Both figures are above the 4321 and 1207 required to meet the regulations. In other words, even if all 429 non-CDL drivers were included in the 4517 tested for controlled substances, the applicants would still test 4088 CDL drivers, which constitutes 52.5% of the total number of CDL drivers. Likewise, even if all 429 non-CDL drivers were included in the 1231 tested for alcohol, the applicants would still test 802 CDL drivers, which constitutes 10.3% of the total number of CDL drivers. In both cases, the applicants meet and exceed the regulatory requirements.

The above figures are the latest available and the applicants are ready to prove their authenticity. Please feel free to contact me if you have any questions regarding this information or any other matter related to the applications for exemption.

Sincerely,

James A. Calderwood
Counsel for Mayflower Transit LLC and
United Van Lines LLC